

TESTIMONY OF  
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BEFORE THE COMMITTEE ON FOREIGN RELATIONS  
UNITED STATES SENATE

ON THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

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Mr. Chairman and members of the Committee:

I am pleased to appear before you today to testify in support of the Inter-American Convention Against Corruption ("the Convention"), and to address generally the issue of corruption in the Americas.

A Political Commitment to Combat Corruption in this Hemisphere

The problem of corruption is a major obstacle to development in the Americas, and we believe every effort must be made to address it. Corruption slows and impedes the consolidation of democratic institutions, and weakens the rule of law. It undermines the confidence of people in their government. It is all too often linked with trans-border criminal activity, including drug trafficking, organized crime, and money laundering. In sum, its effects are wide-ranging and pernicious.

Corruption also undermines the ability of businesses of the United States and other countries to operate in a transparent, honest and predictable environment. In 1996, an IMF study found that corruption lowers investment and economic growth. The reason is simple: investors are wary of investing in countries where corruption is prevalent, and low levels of investment lead to low growth. The Finance Ministers of the Western Hemisphere, at their meeting in Mexico in February 2000, noted that "corruption has been recognized as a serious problem that adversely affects investment, public

revenue, growth, and development in much of the Western Hemisphere" and that corruption is "a threat to investor and taxpayer confidence."

A shared recognition of the importance of this issue prompted the nations of the Hemisphere to agree to develop an unprecedented regional instrument to help combat that scourge of corruption. During the early 1990s, the democratic governments of Latin America became increasingly aware that corruption threatened political stability and economic growth in their countries. When the 34 democratically elected heads of state met in Miami in 1994 for the first Summit of the Americas, there was widespread support for practical action to combat corruption. The President of Venezuela specifically recommended negotiation of an Inter-American Convention Against Corruption.

The willingness of the Hemisphere's countries to take this step, and to follow it up -- as a significant number have -- by signing and ratifying the treaty promptly, reflects a commitment by the governments of the region to address the problem in a serious fashion. My travels in the region and contacts with regional leaders convince me that popular support for anti-corruption initiatives remain strong and that governments are committed to action. However, it is not enough for countries to sign and ratify the Convention and pass new criminal laws. U.S. leadership will be critical to ensuring the implementation of the obligations of the Convention. We will be working on an effective strategy to ensure that the countries of the Hemisphere fully implement this agreement. By becoming a Party to the Convention, the United States will be better placed to promote its effective implementation.

### One Element of a Global Approach

The fight against corruption is a high priority in our foreign policy, particularly with regard to this Hemisphere. The United States has taken a leadership position in combating overseas commercial bribery ever since the enactment in 1977 of the Foreign Corrupt Practices Act ("FCPA"). Later, we led the effort to negotiate an international convention that would enshrine the basic provisions of the FCPA: the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("the OECD Anti-Bribery Convention"). The United States Senate voted its advice and consent to ratification of that Convention in 1998. In the same year, Congress passed implementing legislation that broadened the FCPA slightly to conform to our obligations under the Convention. Nineteen other states have ratified the OECD Convention, which entered into force in February 1999. A vigorous review of implementation is under way; the domestic implementing laws of 21 countries have been scrutinized by the OECD Bribery Working Group. The success of the United States on the OECD Convention is a tribute to the strong bipartisan support from the members of this Committee, and from others in both the House and Senate.

The Administration is combating corruption on many other fronts. In February of last year, Vice President Gore hosted the Global Forum on Fighting Corruption, which was attended by representatives from over 90 countries. Among the attendees were twenty-one OAS member governments, five at the level of Vice-President, and one head of a national parliament; the Attorney General of Mexico; and several representatives from Latin American non-governmental organizations. At the Forum, the Vice President and the Secretary of State made clear the importance of the Inter-American Convention and the commitment of the Administration to its ratification. We are now making

preparations for the Second Global Forum, which we are co-hosting with the government of The Netherlands, and which will take place in The Hague in May of next year.

The Administration has encouraged the IMF, the World Bank, and the Inter-American Development Bank to incorporate anti-corruption principles in their programs. All three of these major international financial organizations are involved in supporting and monitoring a wide variety of anti-corruption programs that include judicial reform, integrated financial systems, the development of public ethics offices, and public administration reform. These institutions, along with the U.S. Government, the United Nations and a number of foundations belong to an 18 member Donor Consultative Group on Accountability/Anti-corruption in Latin America and the Caribbean. The Group meets regularly and shares information about anti-corruption activities in the hemisphere.

We have also pushed for a strong Anti-Corruption Initiative for the Stability Pact for Southeast Europe. Countries of the region have made commitments to take priority measures against corruption, especially actions to: implement international anti-corruption instruments, promote good governance, strengthen legislation, promote transparency and integrity in business, and support public involvement. An anti-corruption steering group under the Stability Pact will monitor progress in anti-corruption efforts. The United States, the European Commission, the OECD, and the Council of Europe, and the World Bank are working closely in support of this Initiative.

Thus, our anti-corruption effort involves a set of integrated policies. Regional efforts such as the Inter-American Convention are an integral part of this framework.

### Provisions of the Inter-American Convention

The Inter-American Convention was adopted at the Specialized Conference on Corruption of the Organization of American States (OAS) in Caracas, Venezuela, on March 29, 1996. Twenty-one states signed the treaty on the date of its adoption. The United States participated actively in the Convention's negotiation, and signed it on June 27, 1996. To date, 26 states have signed, and 18 states have deposited their instruments of ratification. The Convention entered into force on March 6, 1997.

The Convention was the first instrument of its kind in the world to be negotiated, and was adopted and opened for signature on March 29, 1996 at Caracas. In addition to requiring parties to criminalize acts of corruption, the Inter-American Convention will enhance cooperation among the nations in the Hemisphere in the battle against both domestic and transnational acts of corruption. I will describe the principal provisions of the Convention and then summarize some of the distinct advantages to the United States of becoming a party.

The Convention requires that the States Party take specific steps to combat corruption. It imposes an obligation on each State Party to enact such legislation as is necessary to criminalize the acts of corruption specified in the Convention. Such acts include, the solicitation or acceptance of bribes; the offering or granting of bribes; any act or omission by a government official to obtain illicit benefits for himself or others; the fraudulent use or concealment of property derived from the above-mentioned acts; and participation in, or association or conspiracy to commit, such acts.

Thus, the treaty requires criminalization not only of the "supply side" or "active" bribery (i.e., the offering of bribes) but also the "demand side" or "passive" bribery (i.e., the solicitation or acceptance of bribes). Although most nations in the Hemisphere already to some extent have enacted corruption legislation, such as anti-bribery laws, the Convention seeks to ensure that such legislation is broad and comprehensive in key areas.

The United States can become a party to the Convention without any additional legislation, because existing U.S. law is already sufficient to satisfy the Convention's provisions regarding requirements for legislation, and the other provisions in the Convention are self-executing and will not require implementing legislation. However, to clarify our interpretation of certain provisions of the Convention, we recommend the submission with the U.S. instrument of ratification of certain Understandings, which I will describe further on in this statement.

The Convention also includes provisions on certain forms of international cooperation and assistance. These include extradition, mutual legal assistance, and asset seizure and forfeiture. With respect to all of these forms of cooperation, the Convention expressly provides that cooperation will be subject to the limitations of applicable existing treaties, including bilateral ones, and to the domestic law of each country. The Convention also contemplates technical cooperation and exchanges of experiences. All of the foregoing are comparable to forms of cooperation already envisioned in various law enforcement treaties to which the United States is a party. Through such cooperation and

assistance, the Convention will facilitate the prevention, investigation, and prosecution of acts of corruption.

One especially noteworthy feature of the Convention is the obligation in Article VIII to criminalize the bribery of foreign officials. In recent years, the United States Government has sought in a number of multilateral fora to persuade other governments to adopt legislation akin to the U.S. Foreign Corrupt Practices Act. The Convention represented a breakthrough on that front, and lent impetus to similar measures pursued by the United States in other multilateral fora, such as the OECD, the Council of Europe, and the United Nations.

#### Benefits of U.S. Ratification

The United States would benefit from becoming a Party to the Inter-American Convention in many ways. First, becoming a Party would strengthen the ability of the United States to continue to assert a leadership role in this area. Most of the countries in this Hemisphere are at least signatories to the Convention, and a significant number either are or may soon become Parties. Given the strong position the United States has historically taken in opposition to corruption, and the fact that our laws and policies on this issue are at the forefront internationally, our absence from this treaty regime would be conspicuous, and would detract from our ability to exert pressure on the various states which are party to implement the Convention to the most vigorous extent possible.

Second, U.S. business will benefit from a legal regime that is designed to address the problem of corruption in this Hemisphere. The corruption of governmental officials significantly hinders business



transactions and yields economic inefficiencies. The Convention imposes requirements on other states to criminalize transnational bribery, which would help level the playing field for U.S. companies competing for business in the region. Some countries of the Hemisphere have significant capital-exporting multinational enterprises, so the further expansion of prohibitions on transnational bribery in those countries' legal systems would be a significant complement to the OECD Convention. Clearly, U.S. businesses see the benefits of this Convention, as manifested by the letter dated April 7, 2000 sent to Senator Helms by the leaders of 10 leading business associations to express support for the ratification this year of the Convention.

A third advantage to the United States is that the Convention augments existing mechanisms for international cooperation in law enforcement matters. For example, most of our older extradition treaties with countries in the region render extraditable only certain offenses listed in the treaty. The Corruption Convention would supplement such treaties with the additional offenses contemplated by the Convention, thereby enabling the United States to more effectively obtain the extradition of offenders accused of corruption offenses.

Fourth, ratification would further U.S. efforts to support democratic institutions in the region. Corruption debilitates and destabilizes government institutions. Democracy has made impressive strides in the Western Hemisphere; with the exception of Cuba, democratically elected governments are the norm. However, as recent events in Ecuador and Paraguay underline, democracies remain vulnerable and fragile. Public corruption further undermines the legitimacy of governments and weakens support for the often difficult steps that responsible governments must take. Corruption has become a rallying

cry for citizens too long denied transparent, accountable government. A recent survey in the Hemisphere demonstrated that while the majority of citizens still support democracy as the preferred system of government, a majority are also deeply dissatisfied with the practice of democracy in their country. In many countries in the region, corruption by entrenched political parties and interests has become a major issue in electoral politics in recent years, bringing the issue front and center and demonstrating how corruption can bring down even democratically elected governments if it is not effectively addressed.

#### Four Understandings

The Administration recommends that the United States include four Understandings when it deposits its instrument of ratification for the Convention. These Understandings, the proposed texts of which were included in the Administration's transmittal of the Convention to the Senate, would clarify views of the United States about certain provisions of the Convention. Our views as set forth in these Understandings are consistent with the text and history of the Convention.

First, regarding Article I (on definitions), we recommend an Understanding that the Treaty imposes obligations only with respect to the conduct of U.S. federal officials. We believe this needs to be an Understanding, rather than a Reservation, because it simply reaffirms a point that was already addressed without dissent during the treaty negotiations. At the conclusion of the negotiations, the United States delegate read a statement into the record, asserting that we understood the Convention would not impose obligations with respect to officials other than federal officials for countries with a

federal system of government. This statement was seconded by the delegation from Canada and from other States with federal systems, and was not challenged by any of the other delegations.

Second, regarding Article VII (on legislation), we recommend an Understanding to the effect that existing U.S. laws already criminalize the conduct that the Convention requires be criminalized, even though such laws may not necessarily be defined in terms or elements identical to those used in the Convention. This should be an Understanding rather than a Reservation because the requirement in Article VII refers to criminalization by the Parties of certain acts of corruption described in Article VI, but does not call for each State Party to incorporate into its domestic law each specific element of the acts specified in Article VI.

Third, concerning Article VIII (on transnational bribery), we recommend an Understanding to indicate that the Foreign Corrupt Practices Act (FCPA), a law already in effect for the United States, satisfies the requirement of this Article. Such an Understanding would be consistent with the negotiating history, as this Article was included at the behest of the United States for the very purpose of requiring other States to enact legislation comparable to the FCPA. We believe an Understanding of this nature is necessary simply because the elements of the FCPA are not identical in every minute respect to the elements of the offense described in Article VIII, and there was no expectation by any of the negotiating delegations that the United States would need to modify the FCPA to comply with the Treaty.

Finally, regarding Article IX (on illicit enrichment), we recommend an Understanding that establishment of such an offense would be inconsistent with the U.S. Constitution and fundamental

principles of our legal system, and that therefore – in accordance with the terms of the Article – the U.S. will not establish a new criminal offense of that nature. By its terms, Article IX renders the obligation to criminalize illicit enrichment subject to each State Party's "Constitution and the fundamental principles of its legal system." To the extent that Article IX contemplates establishment of an offense of "illicit enrichment" which would entail shifting the burden of proof to the defendant in a criminal prosecution, it would be inconsistent with the U.S. Constitution and fundamental principles of our legal system. Since the text of Article IX expressly contemplates opt-out in such circumstances, there would be no need to style this statement as a Reservation rather than as an Understanding.

### Conclusion

In conclusion, Mr. Chairman, we believe that to support democracy and sound economic development, we need to take strong action against corruption. This has been a top priority of this Administration, and with strong bipartisan and private sector support, we have made significant progress. The Inter-American Convention Against Corruption will be an important step to advance this cause in our own Hemisphere. It addresses for the first time certain forms of corruption and encourages international cooperation and assistance. U.S. ratification will ensure that we remain a leader in anti-corruption efforts and help create an environment which will promote long-term growth and opportunities for U.S. firms. The Convention is very much in the interest of the United States and our partners in the Hemisphere. The Administration strongly supports and urges the United States Senate to give its advise and consent to the Convention.

I will be pleased to answer any questions the Committee may have.



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